

## SENATE BILL NO. 431

INTRODUCED BY BARKUS

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A MAYOR OR CITY MANAGER TO SUSPEND, DEMOTE, OR DISCHARGE A MUNICIPAL FIREFIGHTER; ESTABLISHING ~~THE DISCHARGED FIREFIGHTER'S RIGHT OF APPEAL~~ OPTIONS FOR A FIREFIGHTER TO ADDRESS DISCIPLINARY ACTION; REMOVING THE REQUIREMENT THAT A CITY COUNCIL DISCHARGE A FIREFIGHTER; AND AMENDING SECTIONS 7-3-4254, 7-33-4110, AND 7-33-4123, AND 7-33-4124, MCA; ~~AND REPEALING SECTION 7-33-4124, MCA.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~NEW SECTION. Section 1. Right to hearing on termination of firefighter's employment. (1) A firefighter who is discharged as a result of a decision by the mayor or city manager has a right of appeal:~~

~~(a) pursuant to the terms of a grievance procedure contained in a collective bargaining agreement if the firefighter is covered by a collective bargaining agreement; or~~

~~(b) to the district court of the county where the firefighter was employed.~~

~~(2) The appeal to the district court must be made within 30 days from the date of the discharge.~~

~~Section 2. Section 7-3-4254, MCA, is amended to read:~~

~~"7-3-4254. Selection and supervision of officers and employees. (1) In cities having a mayor and two councilmen council members, the mayor shall be is superintendent of the department of accounts, finance, and public property, and in cities having a mayor and four aldermen council members, the mayor shall be is superintendent over the department of public affairs, and the The mayor shall have has general supervision over all departments of the city and over all matters connected with said the city, and the The council shall, at its first regular meeting after the election of its members, designate by majority vote one councilman council member to be superintendent over each department of the city, but such the designation may be changed whenever it appears that the public service would be benefited thereby.~~

~~(2) The council shall, at its first regular meeting after the election of its members or as soon thereafter after the meeting as practicable, elect by majority vote the following officers: a city clerk, a city treasurer, a city~~

~~attorney, a city auditor, a city engineer, a city physician, a chief of the fire department, a chief of the police department, a commissioner of weights and measures, a street commissioner, library trustees, cemetery trustees, and such other officers and assistants as shall be provided for by ordinance and which that may be necessary to the proper and efficient conduct of the affairs of the city. The council may by ordinance consolidate any of the offices the election to which is made by the council and may require any officer elected by the council to perform the duties of any other officer and. The council shall appoint a city judge with the authority now conferred by existing laws. The tenure in office of a chief of the fire department and other officers of the fire department shall must be governed by the provisions of 7-33-4106<sub>1</sub> and 7-33-4122<sub>1</sub> through 7-33-4124 7-33-4123, and [section 1]. Any officer or assistant elected or appointed by the council may be removed from office at any time by a majority vote of the members of the council, except as otherwise provided in this part.~~

~~——— (3) The council shall have power may from time to time to create, fill, and discontinue offices and employment other than herein as prescribed in this section, according to their judgment of the needs of the city, and. The council may by majority vote of all the members to remove any such officer or employee, except as otherwise provided for in this part, and may by resolution or otherwise prescribe, limit, or change the compensation of such officers or employees."~~

**NEW SECTION. SECTION 1. DETERMINATION REGARDING SUSPENSION, DEMOTION, OR DISCHARGE -- FIREFIGHTER'S OPTIONS.** (1) IN AN ACTION INITIATED AGAINST A FIREFIGHTER PURSUANT TO 7-33-4123, THE SUSPENDED FIREFIGHTER MUST BE GIVEN A WRITTEN COPY OF THE CHARGES AGAINST THE FIREFIGHTER AND THE REASONS FOR THE ACTION.

(2) AFTER REVIEWING THE CHARGES, THE FIREFIGHTER MAY:

(A) APPEAR BEFORE THE COUNCIL OR COMMISSION AND FOLLOW THE PROCEDURE IN 7-33-4124; OR

(B) APPEAR BEFORE THE MAYOR, CITY MANAGER, OR CHIEF EXECUTIVE OFFICER TO ANSWER THE CHARGES AS PROVIDED IN SUBSECTION (3).

(3) IF THE FIREFIGHTER ELECTS TO APPEAR BEFORE THE MAYOR, CITY MANAGER, OR CHIEF EXECUTIVE OFFICER TO ANSWER THE CHARGES, THE MAYOR, MANAGER, OR OFFICER SHALL CONSIDER THE FIREFIGHTER'S CASE AND MAY DISMISS THE CHARGES OR SUSPEND, DEMOTE, OR DISCHARGE THE FIREFIGHTER.

**SECTION 2. SECTION 7-3-4254, MCA, IS AMENDED TO READ:**

**"7-3-4254. Selection and supervision of officers and employees.** (1) In cities having a mayor and

two ~~councilmen~~ council members, the mayor ~~shall be~~ is the superintendent of the department of accounts, finance, and public property, and in cities having a mayor and four aldermen, the mayor ~~shall be~~ is the superintendent over the department of public affairs; and ~~the mayor shall have~~ has general supervision over all departments of the city and over all matters connected with ~~said the city, and the~~ the. The council shall, at its first regular meeting after the election of its members, designate by majority vote one ~~councilman~~ member of the council to be superintendent over each department of the city, but ~~such the~~ designation may be changed whenever it appears that the public service would ~~be benefited thereby~~ benefit from the change.

(2) The council shall, at its first regular meeting after the election of its members or as soon thereafter as practicable, elect by majority vote ~~the following officers:~~ a city clerk, a city treasurer, a city attorney, a city auditor, a city engineer, a city physician, a chief of the fire department, a chief of the police department, a commissioner of weights and measures, a street commissioner, library trustees, cemetery trustees, and ~~such~~ any other officers and assistants ~~as shall~~ that may be provided for by ordinance and ~~which that~~ which may be necessary to the proper and efficient conduct of the affairs of the city. The council may by ordinance consolidate any of the offices the election to which is made by the council and may require any officer elected by the council to perform the duties of any other officer and shall appoint a city judge with the authority ~~now~~ conferred by existing laws. The tenure in office of a chief of the fire department and other officers of the fire department ~~shall be~~ is governed by the provisions of 7-33-4106, ~~and 7-33-4122 through 7-33-4124, and [section 1].~~ Any other officer or assistant elected or appointed by the council may be removed from office at any time by a majority vote of the members of the council, except as otherwise provided in this part.

(3) The council ~~shall have power from time to time to~~ may:

(a) create, fill, and discontinue offices and employment other than ~~herein those~~ those prescribed, ~~according to their judgment of the needs of the city, and in this section:~~

(b) by majority vote of all the members ~~to~~ remove any ~~such~~ officer or employee, except as otherwise provided for in this part; and

(c) ~~may~~ by resolution or otherwise prescribe, limit, or change the compensation of ~~such officers or employees~~ any officer or employee."

**Section 3.** Section 7-33-4110, MCA, is amended to read:

**"7-33-4110. Volunteer companies not affected.** ~~Nothing contained in~~ The provisions of 7-33-4101 through 7-33-4104, 7-33-4106 through 7-33-4108, 7-33-4112, 7-33-4113, 7-33-4122, ~~7-33-4123, through~~

~~THROUGH 7-33-4125, and 7-33-4127, and [section 1] shall may not~~ be held or construed to affect any fire organization known as a volunteer fire company."

**Section 4.** Section 7-33-4123, MCA, is amended to read:

**"7-33-4123. Authority to suspend, DEMOTE, OR DISCHARGE firefighters.** ~~(+) (1) The~~ SUBJECT TO [SECTION 1], THE mayor or city manager may suspend, DEMOTE, or discharge the chief, ~~and THE~~ assistant CHIEF, or any firefighter of the fire department for neglect of duty or a violation of any of the rules of the fire department.

~~(2) The chief of the fire department may suspend the assistant chief of the fire department or any firefighter for like cause.~~

~~———— (3) The assistant chief of the fire department may suspend any firefighter for a like cause.~~

(2) SUBJECT TO [SECTION 1]:

(A) THE CHIEF OF THE FIRE DEPARTMENT MAY SUSPEND, DEMOTE, OR DISCHARGE THE ASSISTANT CHIEF OF THE FIRE DEPARTMENT OR ANY FIREFIGHTER FOR NEGLECT OF DUTY OR A VIOLATION OF ANY OF THE RULES OF THE FIRE DEPARTMENT; AND

(B) THE ASSISTANT CHIEF OF THE FIRE DEPARTMENT MAY SUSPEND, DEMOTE, OR DISCHARGE ANY FIREFIGHTER FOR NEGLECT OF DUTY OR A VIOLATION OF ANY OF THE RULES OF THE FIRE DEPARTMENT."

~~———— NEW SECTION. Section 5. Repealer. Section 7-33-4124, MCA, is repealed.~~

**SECTION 5. SECTION 7-33-4124, MCA, IS AMENDED TO READ:**

**"7-33-4124. Suspension -- review procedure.** ~~(1) In all cases of suspension the person suspended must be furnished with a copy of the charge against him, in writing, setting forth reasons for the suspension. Such~~ Whenever a firefighter is suspended pursuant to 7-33-4123, the procedures provided in subsections (2) through (4) apply.

(2) The charges must be presented to the next meeting of the council or commission and for a hearing had thereon, when the suspended member of the fire department may appear in person or by counsel and make his defense to said charges at the council or commission meeting immediately following the suspension.

~~(2)(3) Should~~ If the charges are not be presented to the next meeting of the council or commission after the suspension as provided in subsection (2) or should if the charges be are not found not to be proven by the council or commission, the suspended person shall firefighter must be reinstated and be is entitled to his the

1 firefighter's usual compensation for the time ~~so~~ suspended.

(3)(4) If ~~such~~ the charges are found to be proven by the council or commission, the council or commission, by a vote of a majority of the whole council or commission, may ~~impose such penalty as it shall determine the offense warrants, either in the continuation of~~ continue the suspension for a limited time or ~~in the removal of the suspended person from the fire department~~ may demote or discharge the firefighter."

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7 NEW SECTION. **Section 6. Codification instruction.** [Section 1] is intended to be codified as an

8 integral part of Title 7, chapter 33, part 41, and the provisions of Title 7, chapter 33, part 41, apply to [section 1].

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